

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALICIA RENEE CHUNGLO-
STEWART,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

NO. C2:13-CV-01872-JCC-JLW

REPORT AND
RECOMMENDATION

BASIC DATA

Type of benefits sought:

(X) Supplemental Security Income – Disability

Plaintiff:

Sex: Female

Age: 41 at amended alleged onset date, 42 at ALJ hearing

Principal Disabilities Alleged by Plaintiff: Right knee pain with crepitus, personality disorder with borderline and anti-social features, substance abuse disorder.

Disability Allegedly Began: original date February 3, 2003, amended date May 5, 2011

Principal Previous Work Experience: receptionist, bookkeeper

Plaintiff Last Worked: unclear, possibly January 2009

Education Level Achieved by Plaintiff: GED obtained in Junior year of high school

PROCEDURAL HISTORY – ADMINISTRATIVE

Before ALJ:

Date of Hearing: March 5, 2012

Date of Decision: March 14, 2012

Appears in Record at: Decision AR 23-43, Hearing Transcript AR 50-116

Summary of Decision:

Claimant has not engaged in substantial gainful activity since the amended onset date of May 5, 2011. She has severe impairments of right knee pain with crepitus, personality disorder with borderline and anti-social features, and substance abuse disorder in reported remission. These impairments separately and combined do not qualify under the Listings. She has a Residual Functional Capacity (RFC) to perform medium work with non-exertional mental capacity limitations. She has the ability to perform simple and some well-learned complex tasks. She is capable of superficial interaction with the public and occasional contact with co-workers. She would perform best with work involving a stable routine. Claimant has some past work as a receptionist or bookkeeper but due to her RFC she is unable to perform that past work. She is a younger individual age 18-49 with at least a high school education and ability to communicate in English. Claimant's mental limitations due not unduly reduce the capacity to perform unskilled work. Based on the Medical-Vocational Guidelines claimant is not disabled.

Before Appeals Council:

Date of Decision: August 8, 2013

Appears in Record at: AR 1-6

Summary of Decision: declined review

PROCEDURAL HISTORY – THIS COURT

Jurisdiction based upon: 42 U.S.C. § 405(g)

Brief on Merits Submitted by (X) Plaintiff (X) Commissioner

RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

(X) Affirm

EVALUATING DISABILITY

As the claimant, Ms. Chunglo-Stewart bears the burden of proving that she is disabled within the meaning of the Social Security Act (the “Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999) (internal citations omitted). The Act defines disability as the “inability to engage in any substantial gainful activity” due to a physical or mental impairment which has lasted, or is expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments are of such severity that she is unable to do her previous work, and cannot, considering her age, education, and work experience, engage in any other substantial gainful activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§ 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At step five, the burden shifts to the Commissioner. *See also Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).

ISSUES ON APPEAL

1. Did the ALJ improperly rely on a prior ALJ decision to reject the claim?
2. Did Plaintiff meet the 12-month durational requirement?
3. Did the ALJ properly reject the opinions of mental health providers?
4. Did the ALJ err by relying on the Medical Vocational Guidelines?

1 dependence.” AR 726. Because her mental health issues are assessed as independent of her
2 substance abuse, being clean and sober is not a changed circumstance that would impact her
3 mental impairments.

4 Plaintiff also alleges worsening mental health. However, records from November 2011-
5 January 2012 state that Plaintiff’s symptoms are moderate, improved, and stable. AR 711-712,
6 709, 716, 717. She was also showing continued and significant progress. AR 711-712, 709,
7 716, 717. These positive progress notes demonstrate improving rather than worsening mental
8 health. Plaintiff fails to show changed circumstance demonstrating increased impairment. *Res*
9 *judicata* applies. The ALJ did not err by incorporating the analysis and findings of the prior
10 ALJ’s decision.

11 B. Durational Requirement

12 The ALJ concluded that the amended onset date of May 5, 2011, a mere 10 months
13 prior to the ALJ hearing, meant that Plaintiff did not meet the 12 month durational
14 requirement. AR 26. Plaintiff claims this was a misapplication of 20 C.F.R. § 416.905 which
15 states that disability is “the inability to do any substantial gainful activity by reason of any
16 medically determinable physical or mental impairment which can be expected to result in death
17 or which has lasted or can be expected to last for a continuous period of not less than 12
18 months.” Because Plaintiff’s case manager stated that her mental impairments were expected
19 to last more than 12 months, she satisfied the durational requirement. AR 513.

20 The Court agrees that the ALJ erred. But, an error is harmless “where the mistake was
21 nonprejudicial to the claimant or irrelevant to the ALJ’s ultimate disability conclusion.” *Stout*
22 *v. Comm’r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006). The ALJ completed the
23 five step analysis and found that plaintiff was not disabled. The error as to the durational
24 requirement had no impact on the ALJ’s final decision, and was therefore harmless.

1 C. Opinion Evidence

2 I. *Lay Witnesses*

3 Plaintiff claims that the ALJ erroneously disregarded the opinion evidence of her
4 mental health providers. Rodney Purdy, CDP, MH, is her chemical dependency counselor and
5 mental health provider, and Sheila Johansen, ARNP, is her nurse practitioner. Both of these
6 mental health providers are “other sources” under 20 C.F.R. § 404.1513(d)(1) and provide lay
7 witness testimony. “Lay testimony as to a claimant's symptoms is competent evidence that an
8 ALJ must take into account, unless he or she expressly determines to disregard such testimony
9 and gives reasons germane to each witness for doing so.” *Lewis*, 236 F.3d at 503 (internal
10 citations omitted).

11 The ALJ accorded no weight to the opinions of Mr. Purdy and Ms. Johansen that
12 Plaintiff had several “marked” limitations in concentration and persistence, ability to complete
13 a normal work day, and ability to interact appropriately with others. AR 37, AR 486. Mr.
14 Purdy also opined that Plaintiff had severe symptoms of mania, social withdrawal, and anxiety
15 that predate her substance use. AR 512. The ALJ stated that these statements are “not at all
16 consistent with the claimant’s longitudinal history,” and “inconsistent with Mr. Purdy’s recent
17 treatment of the claimant.” AR 37-38.

18 Mr. Purdy’s case notes concerning his visits with Plaintiff after her sobriety date do not
19 support the severity of the symptoms he alleges. In November 2011, Mr. Purdy’s assessment
20 says “[c]lient is stable, eye contact good, hygiene good. Affect is full, mood positive. Thoughts
21 are logical and connected and client has improved insight and judgment. Continues to make
22 significant progress.” AR 716. He also states that Plaintiff’s psychiatric symptoms were
23 “moderate, improved and stable” and she was stable on her medications. AR 717. Plaintiff
24 continued to show good progress and stability in December 2011. AR 711-712. And the

1 positive assessments continue into January 2012, when Plaintiff is “[m]aking significant
2 progress.” AR 709.

3 These positive evaluations differ from the reported severe limitations. Substantial
4 evidence supports the finding of a discrepancy between Mr. Purdy and Ms. Johansen’s
5 assessment and the treatment notes. This discrepancy is a germane reason to discount lay
6 witness testimony. The ALJ did not err in the assessment of these opinions.

7 2. *Medical Evidence from Psychiatrist*

8 Dr. Mary Bartels, a psychiatrist, co-signed a September 2011 DSHS evaluation form
9 completed by Mr. Purdy. AR 514. Generally, medical opinions are afforded significant weight
10 and require clear and convincing evidence for rejection. *Lester*, 81 F.3d at 830. Here, the ALJ
11 afforded no weight to the co-signing psychiatrist because Mr. Purdy was the examiner and
12 “[t]here is no evidence to indicate that this person had any significant involvement with the
13 claimant.” AR 38. Indeed, the voluminous medical records from Sound Mental Health include
14 no other reference to Dr. Mary Bartels. AR 517-622, 676-736. There is no evidence that Dr.
15 Bartels ever engaged with or evaluated Plaintiff. As a result, the ALJ gave a clear and
16 convincing reason for according no weight to her signature.

17 D. Medical-Vocational Guidelines

18 At step five, the burden shifts to the agency to “the claimant can perform a significant
19 number of other jobs in the national economy.” *Thomas v. Barnhart*, 278 F.3d 947, 955 (9th
20 Cir. 2002). This burden can be met by the use of vocational experts or reference to the
21 Medical-Vocational Guidelines. *Id.* Here, the ALJ consulted the Medical-Vocational
22 Guidelines and concluded that Plaintiff was not disabled. AR 39. Plaintiff contends that her
23 non-exertional limitations preclude use of the Medical-Vocational Guidelines and that the ALJ
24 erred by failing to call a vocational expert.

1 Use of the Guidelines is justified only where the claimant can perform the full range of
2 jobs in the category. *Tackett*, 180 F.3d at 1101. Significant non-exertional limitations may
3 make reliance on the Guidelines inappropriate. *Id.* at 1101-02. To determine the applicability
4 of the Guidelines, the ALJ should first determine if a claimant's non-exertional limitations
5 significantly limit the range of work permitted by his exertional limitations. *Id.* at 1102. The
6 ALJ's decision states that, "claimant retains the capacity to perform substantially all of the
7 above referenced unskilled, medium, light, and sedentary *unskilled* work, *i.e.*, the universe of
8 which the Guidelines take administrative notice, *has not been significantly eroded* by
9 claimant's nonexertional limitations." AR 41. Plaintiff disagrees with the assessment,
10 contending that her mental limitations are severe enough to preclude use of the Guidelines.

11 Plaintiff refers to the opinion evidence from Mr. Purdy and Ms. Johansen to support her
12 claim of severe mental limitations. These lay witnesses cited moderate, marked, and severe
13 impairments. AR 511-13. As discussed above, the ALJ gave germane reasons for according
14 these opinions very little weight. Instead, the ALJ determined that Plaintiff had moderate
15 difficulties with social functioning. She was cooperative, made eye contact, laughed, smiled
16 and joked appropriately. As discussed above, her case manager's records show improvement
17 and progress. AR 29. The ALJ found that Plaintiff has mild difficulties with concentration,
18 persistence or pace. AR 29. She has "at least average abilities" and no limitations in her ability
19 to understand, remember, and persist following simple and complex instructions. AR 29. The
20 ALJ also remarked that Plaintiff "was glib and organized in her testimony." AR 29.

21 Given the evidence cited, substantial evidence supports the ALJ's determination that
22 the mental limitations were not "'sufficiently severe' so as to significantly limit the range of
23 work permitted by the claimant's exertional limitations." *Hoopai v. Astrue*, 499 F.3d 1071,
24

1 1075 (9th Cir. 2007). As a result, the ALJ did not err by relying on the Medical-Vocational
2 Guidelines and not calling a vocational expert.


3 CONCLUSION

4 For the foregoing reasons, the Court recommends that this case be AFFIRMED and the
5 case DISMISSED. A proposed order accompanies this Report and Recommendation.

6 Objections to this Report and Recommendation, if any, must be filed with the Clerk
7 and served upon all parties to this suit no later than fourteen (14) days after the date on which
8 this Report and Recommendation is signed. If no timely objections are filed, the Clerk shall
9 note this matter for the earliest Friday after the deadline for objections, as ready for the
10 Court's consideration. Failure to file objections within the specified time may affect your
11 right to appeal.

12 If objections are filed, any response is due within fourteen (14) days after being served
13 with the objections. A party filing an objection must note the matter for the court's
14 consideration fourteen (14) days from the date the objection is filed and served. Objections
15 and responses shall not exceed twelve pages.

16 DATED this 11th day of July, 2014.

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19 JOHN L. WEINBERG
20 United States Magistrate Judge
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